

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

KERRY RHOTENBERRY AND  
ROBERT RHOTENBERRY  
*Plaintiffs,*

v.

NATIONWIDE INSURANCE  
COMPANY OF AMERICA,  
SCOTTSDALE INSURANCE COMPANY  
*Defendants.*

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CIVIL ACTION NO. 6:20-cv-00008

**NOTICE OF REMOVAL**

Defendants Nationwide Insurance Company of America and Scottsdale Insurance Company (“Defendants”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, file this Notice of Removal of the lawsuit captioned *Kerry Rhotenberry and Robert Rhotenberry v. Nationwide Insurance Company of America, Scottsdale Insurance Company*; Cause No. 20-01-25,032; In the 267<sup>th</sup> Judicial District of DeWitt County, Texas.

**I.  
BACKGROUND**

1. Plaintiffs Kerry Rhotenberry and Robert Rhotenberry (hereinafter “Plaintiffs”) initiated the present action by filing their Original Petition in Cause No. 20-01-25,032; In the 267<sup>th</sup> Judicial District of DeWitt County, Texas on January 2, 2020 (the “State Court Action”). *See* Plaintiffs’ Original Petition, attached as **Exhibit A**.

2. Defendants appeared and answered on January 31, 2020, asserting a general denial to the claims and allegations made in Plaintiffs’ Original Petition. *See* Defendants’ Original Answer, attached as **Exhibit B**.

3. Pursuant to 28 USC § 1446(a) all a copy of all process, pleadings, and orders served upon Defendants in the State Court Action are incorporated in **Exhibit A**. Pursuant to Local Rule 81, a full copy of the state court file has been requested and will be filed upon receipt. Pursuant to Southern District of Texas Local Rule 81(4), the State Court Action docket sheet is attached as **Exhibit C**.

4. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendants will give written notice of the removal to Plaintiffs through their attorney of record, and to the clerk of the 267th Judicial District Court of DeWitt County, Texas.

5. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendants of Plaintiffs' Original Petition and less than one year after the commencement of this action.

## **II. JURISDICTION**

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

### **A. Diversity of Parties**

7. Plaintiffs are domiciled in DeWitt County, Texas. *See Exhibit A, ¶ 2*. Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiffs are citizens of the State of Texas.

8. Nationwide Insurance Company of America is organized under the laws of Ohio and maintains its principal place of business in Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Nationwide Insurance Company of America is a citizen of the State of Ohio.

9. Scottsdale Insurance Company are organized under the laws of Ohio and maintains its principal place of business in Arizona. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Scottsdale is a citizen of the States of Ohio and Arizona.

10. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

**B. Amount in Controversy**

11. Plaintiffs' Original Petition states that Plaintiffs seek "monetary relief between \$100,000.00 and \$200,000.00" *See* Plaintiffs' Original Petition, **Exhibit A**, ¶ 5. Generally, "the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy."<sup>1</sup> Removal is proper if it is "facially apparent" from the complaint that the claims asserted exceed the jurisdictional amount.<sup>2</sup> The threshold for diversity jurisdiction, \$75,000, is therefore met by the allegations of Plaintiffs' Original Petition.

12. Plaintiffs further seek compensation for (1) all compensatory damages, (2) punitive damages, (3) treble damages, (4) pre- and post-judgment interest, and (5) attorneys' fees and costs. *See Exhibit A*, ¶ 40. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.<sup>3</sup>

13. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit A*. Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

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<sup>1</sup> 28 U.S.C. § 1446(c)(2); *see also Santiago v. State Farm Lloyds*, No. 7:13-CV-83, 2013 WL 1880845, at \*1 (S.D. Tex. May 3, 2013).

<sup>2</sup> *Puckitt v. Wells Fargo Bank, N.A.*, No. G-09-0056, 2010 WL 2635626, at \*3 (S.D. Tex. June 28, 2010) (citing *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)).

<sup>3</sup> *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

**III.  
CONCLUSION**

14. Removal of this action under 28 U.S.C. § 1441(a) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

15. WHEREFORE, Defendants Nationwide Insurance Company of America and Scottsdale Insurance Company hereby provide notice that this action is duly removed.

Respectfully submitted,

/s/ Patrick M. Kemp

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served via CMRRR this the 31<sup>st</sup> day of January, 2020 to:

Jeffrey G. Zane  
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/s/ Patrick M. Kemp  
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